

REMARKS

In summary, claims 1-10 and 15-22 are pending. Claims 1-10 and 15-22 are rejected under 35 U.S.C. § 103. No claims are amended. Reconsideration of the application in view of the following remarks is respectfully requested.

Rejection of Claims 1-10 and 15-22 under 35 U.S.C. § 103(a)

Claims 1-10 and 15-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,069,553, issued to Narayanaswamy *et al.* (hereinafter referred to as “Nara”) in view of U.S. Patent No. 7,181,731, issued to Pace *et al.* Applicants respectfully traverse the rejection.

It is submitted that Nara is not prior art. The priority date of Nara, which is also Nara’s filing date, is March 3, 2003. In compliance with 37 C.F.R. § 1.131, attached hereto, is an inventor declaration with redacted copies of documents together showing that the claimed invention was conceived prior to March 3, 2003 and that the inventors engaged in reasonable diligence to constructively reduce the invention to practice from prior to March 3, 2003 to the filing date of June 20, 2003, in accordance with MPEP 715.07(a) and 37 CFR 1.131.

Before March 3, 2003 to June 20, 2003, the inventors collaborated, when necessary, with patent attorneys to prepare the patent application and accompanying documents. While “the actual dates of acts relied on to establish diligence must be provided” per MPEP 715.07 II, diligence in this case “relates to reasonable ‘attorney-diligence’ and ‘engineering-diligence,’ which does not require that ‘an inventor or his attorney … drop all other work and concentrate on the particular invention involved.’” MPEP 2138.06 (citations omitted). “An applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity …” MPEP 715.07(a). “Reasonable diligence is established if attorney worked reasonably hard on the application during the continuous critical period. If the attorney has a reasonable backlog of unrelated cases which he takes up in chronological order and carries out expeditiously, that is

sufficient.” MPEP 2138.06 (citations omitted).

Having elected not to disclose specific dates in accordance with MPEP 715.07 II, the inventors state in the declaration that, “we hereby declare that we invented the subject matter of the pending claims prior to March 3, 2003. We further hereby declare that we worked diligently from a date prior to March 3, 2003 to the date of constructive reduction to practice, June 20, 2003, the filing date of the [pending] application, in order to prepare the [pending] application.”

Additional factual evidence showing that work was sustained in a more or less continuous manner is provided in the form of a redacted copy of an invoice showing activity during the time period prior to March 3, 2003 to June 20, 2003. The submitted invoice has been redacted to remove unnecessary business-related information that is not pertinent to the claimed subject matter.

Accordingly, reconsideration and withdrawal of the rejection of claims 1-10 and 15-22 under 35 U.S.C. § 102(a), based on Nara, is respectfully requested.

Any amendments made during prosecution of the pending application are without abandonment of subject matter. Applicants expressly reserve the right to, in the pending application or any application related thereto, reintroduce any subject matter removed from the scope of claims by any amendment and introduce any subject matter not present in current or previous claims.

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CONCLUSION

In view of the foregoing remarks, declaration, and evidence, it is respectfully submitted that this application is in condition for allowance. Reconsideration of this application and an early Notice of Allowance are respectfully requested.

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